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by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. It is the intent of the general assembly with this act to rename and reorganize the department of correction as the department of criminal justice. The department in accordance with the structure established in this act shall manage the institutions over which it retains control and shall manage the transition and administer the contracts in a system based on the greater use of private management for the state's correctional institutions.

SECTION 2. Tennessee Code Annotated, Section 4-3-601, is amended by deleting the existing language and substituting instead the following:

(a) Effective July 1, 1998, there is hereby created the department of criminal justice.

(b)(1) There is created a Corrections Policy Council. The members of the council are the governor, the commissioner of finance and administration, the comptroller of the treasury, the speaker of the senate, and the speaker of the house of representatives. The governor shall serve as chair of the council. A member's term is the same as his or her term of office. Each member may designate a person to serve on the council as his or her designee with full voting rights. The council may appoint staff or hire a consultant to satisfy the duties under this act.

(2) The council shall have the duty to:

(A) Meet on no less than a quarterly basis;

(B) Form working groups on major correction issues; and

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(C) Review the state's correction policy and make recommendations to the commissioner.

(3) Before implementing a major policy decision in any of the following areas, the commissioner of criminal justice shall consult with the council:

(A) Agency organization leadership;

(B) Compensation and benefit program for state correction and contracting personnel;

(C) Contract administration and performance administration;

(D) Prison facility or service contracting initiatives;

(E) Major operational support systems; and

(F) Facility and program continuity.

(c) The Tennessee Code Commission is directed to change each reference in the Tennessee Code Annotated from the "department of correction" to the "department of criminal justice" in the annual supplements as the relevant sections of law are amended or as volumes are replaced.

(d) All materials, supplies, and property of the department of correction that bear the name or initials of the department shall be used until the materials, supplies and property are exhausted or replaced.

SECTION 3. Tennessee Code Annotated, Section 4-3-602(b), is amended by designating the existing language as subdivision (1) and by adding the following new subdivisions:

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(2) Before appointing a person to serve as commissioner of criminal justice, the governor shall consult with the corrections policy council.

(3) Before terminating the services of a person serving as commissioner of criminal justice, the governor shall consult with the corrections policy council.

SECTION 4. Tennessee Code Annotated, Section 41-24-102(2), is amended by deleting subdivision (F) in its entirety and substituting instead the following:

(F) Operation of facilities; including management, staffing, security supervision and custody of inmates, and providing a safe and secure confinement of inmates;

SECTION 5. Tennessee Code Annotated, Section 41-24-102, is amended by deleting Subdivision (5) in its entirety and substituting instead the following:

(5) "Prison contractor" or "contractor" means any entity including a county, municipality, other governmental entity, or a private or non-profit company or organization entering into a contractual agreement to provide correctional services to inmates under the custody of the department.

SECTION 6. Tennessee Code Annotated, Section 41-24-103, is amended by deleting the section in its entirety and substituting instead the following:

(a) The commissioner may enter into contracts for correctional services only as provided in this chapter. In addition, the provisions of §12-4-109(a) and §12-4-110 shall apply to a contract for correctional services. The commissioner of criminal justice shall execute such contract.

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(b) After review and consultation with the corrections policy council, the commissioner shall determine which correctional services may be contracted to a prison contractor and which correctional services are to remain with the department.

(c) The commissioner may execute contracts to restructure the operation of facilities to make them more efficient, to close inefficient facilities, to renovate or make capital improvements to facilities, and to construct new facilities.

(d) Any inmate sentenced to confinement in the department may be incarcerated in a facility in which a prison contractor is providing correctional services pursuant to this chapter.

(e) Any contract for the operation of a facility under this chapter shall provide for, but shall not be limited to, the following:

(1)(A) The commissioner may assign or reassign an inmate to a facility.

(B) A contractor is responsible for inmate transportation within a facility's local area. The commissioner shall establish a local area for each facility.

(2)(A) A contractor shall notify the commissioner in writing of any change in ownership of more than twenty percent (20%) of any class of stock of the contractor involving a sale or merger which occurs during the term of the contract. The contractor shall fully inform the commissioner concerning the ability of the new ownership to comply fully with the terms and conditions of the contract. The state reserves the right to terminate the contract without penalty if

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the ownership of the contractor changes. A failure to comply with the notice and reporting requirements of this subsection is a breach by a contractor.

(B) A contractor may not assign the contract or enter into a subcontract for any of the services performed under the contract without the prior written approval of the commissioner. Each of a contractor's subcontracts whereby goods or services are provided to a facility is assignable to the state. If the state assumes control of a facility, the state may assume each such subcontract without any competitive procedures for a period of not more than six (6) months.

(3) After the execution of the contract, if any issue of contract interpretation occurs, the decision of the commissioner is final.

(4)(A) A contractor shall maintain documentation of all charges against the state under a contract in accordance with generally accepted accounting principles. A contractor shall maintain any document relative to such contract for three (3) years from the date of final payment. At any reasonable time and upon reasonable notice, the comptroller of the treasury or the commissioner may audit any document relative to the contract.

(B) The commissioner shall have immediate, complete, and unrestricted access to all parts of a facility at any time. The commissioner shall have immediate, complete and unrestricted access to any document in any way pertaining to the obligations of a contractor under the contract. Any such document is deemed to be a public record and open to inspection as provided in §10-7-503.

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(5) A contractor shall maintain a performance bond and a payment bond for the duration of any contract. The amount of the performance bond shall be a fixed percentage of the contract amount.

(6) If the commissioner determines a contractor is not operating in compliance with a term or condition of the contract, and such noncompliance adversely affects the security of a facility or presents a hazard to the safety or health of an inmate or other individual, the commissioner may order a contractor to comply immediately with the commissioner's directive or the commissioner may assume control of the facility.

(7) A court or commission of competent jurisdiction shall strictly enforce any remedy available to the state in any contract entered pursuant to this chapter. The state may specifically enforce the provisions of the contract through injunctive relief. The court shall presume that the interests of the state and the public outweigh the interest of a contractor. If a contractor breaches the contract, the state may withhold as liquidated damages the amount designated by contract. Any provision which entitles the state to withhold or receive liquidated damages is presumed to be likewise enforceable.

(8)(A) A contractor shall agree to protect, indemnify and hold harmless the state, any agency, department, employee and official of the state from any claim arising from the performance under the contract of a contractor. For the purpose of this subsection, "claim" includes any cost, expense, and attorney fee, including those of the office of the attorney general, incurred as the result of a claim.

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(B) A contractor shall agree to indemnify and hold harmless the state, any agency, department, employee and official of the state from any claim resulting from any action taken by its employees, either individually or collectively, including but not limited to, a strike. In no event, is the state, any agency, department, employee and official of the state liable for an act or omission of a contractor, its employees, agents, independent contractors or subcontractors.

(9) A contractor shall exercise its best efforts to prevent an escape from a facility. If the frequency of escapes or attempted escapes exceeds those from a comparable state facility, the commissioner may terminate the contract for convenience.

(10) A contractor shall either adopt the department's policies regarding the custody and control of inmates or obtain the written approval of the commissioner regarding a contractor's policies. A contractor shall establish a written policy regarding the use of force. Such policy is subject to revision and written approval of the state. The policy shall govern the time, manner, and place for the use of force. The policy shall address the use of deadly force, and the policy shall articulate which employees may carry firearms.

SECTION 7. Tennessee Code Annotated, Section 41-24-104(a)(1), is amended by adding the following language at the end of the subdivision:

Any official whose approval is required under this subdivision or §12-4-110 shall not have a direct business interest with a prison contractor. In addition, an immediate family member of such official shall not have a direct business interest with such

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contractor. For the purpose of this section, "direct business interest" means a direct business relationship resulting in a pecuniary benefit with a prison contractor or a direct ownership interest in any such contractor. "Immediate family member" means a spouse or minor child living in the household of the official. If such conflict exists, the official shall recuse herself or himself from the approval process. The governor shall fill the vacancy for the purpose of the approval procedure. If the governor recuses himself or herself, the two (2) speakers shall fill the vacancy for the approval process.

SECTION 8. Tennessee Code Annotated, Section 41-24-104(a)(2), is amended by adding the following language at the end of the subdivision:

The committees listed in this subdivision (2) shall have forty-five (45) days from receipt by the committee staff to review and make comments on a request for proposals, an original contract, and a proposed contract renewal. The entities listed in subdivision (1) are encouraged to consider the committee's comments, if any, in making decisions.

SECTION 9. Tennessee Code Annotated, Section 41-24-104, is amended by deleting subsections (b) and (c) in their entirety and substituting instead the following:

(b)(1) A contractor shall be given flexibility in the design, construction and operation of correctional facilities to promote innovation and efficiency in operations and cost-effectiveness in facilities consistent with appropriate safety and security and sound correctional practices and standards. The commissioner shall ensure that any facility design is accomplished in such a manner as to ensure a quality and design that the department, if necessary, can assume the facility's management and operation.

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(2) The commissioner shall ensure that the department maintains a capability to resume the management and operation of contracted facilities. The commissioner shall not issue a request for proposals that, if awarded, would result in direct operation by the department of criminal justice of correctional facilities for fewer than thirty percent (30%) of the prisoners sentenced to the custody of the department of criminal justice. The commissioner shall also ensure that among the facilities operated by the department of criminal justice are examples of all major institutional functions and security levels.

(c) The commissioner may issue a request for proposals for a single facility, for geographical regions of the state or for types of facilities. The commissioner may reject any or all proposals for any reason.

(d) The commissioner may enter into a contract only if a proposal complies with the provisions of this chapter and only if:

(1)(A) The commissioner finds that contracting for the operation of the facilities and for the restructuring of the affected institutions will save a significant amount of state funds compared to the present cost to the state of the operation of its facilities; and

(B) Such proposal offers a level and quality of services which are at least equal to those which would be provided by the state; and

(C) For the purpose of making the comparison required by this subdivision, a contractor's cost shall include the state's cost of monitoring contractor performance under §41-24-109; and

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(2) All state employees employed at a facility subject to a contract are offered jobs by a contractor upon meeting the following two (2) conditions:

(A) The employee satisfactorily passes a drug test; and

(B) The employee has no felony conviction if employed in a security position; and

(3) The jobs provided to state employees are at salaries and benefits that are equal to or better than what they receive as state employees. A contractor shall provide health care coverage beginning with the first day of employment. Such coverage shall be equal to or better than the coverage the employees are receiving as state employees and shall include coverage of any pre-existing conditions. After consultation with the corrections policy council, the commissioner of finance and administration may hire an independent benefit consultant for advice on whether a contractor's salary and benefit plans comply with the requirements of this subsection; and

(4)(A) Any career service employee who is employed by a contractor is entitled to equal or superior rights to those rights currently possessed by regular career service employees with regard to termination.

(B) This entitlement shall continue until the earlier of the effective date of a collective bargaining agreement covering the employee or one (1) year from the effective date of the contract between the department and the contractor.

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(5)(A) The department may participate in a program of interchange of employees with any contractor awarded a contract under the provisions of this chapter. An eligible employee is in the career service at an affected institution and is within ten (10) years of eligibility for retirement with full benefits as determined by the Tennessee Consolidated Retirement System. For the purpose of determining an employee's eligibility under this subdivision, an employee's length of service for retirement purposes shall be calculated based on the effective date of the agreement between the department and the contractor which involves the institution where the employee works.

(B) A department employee participating in an exchange of personnel authorized under this subdivision shall be considered during such participation to be on detail to a regular work assignment of the contractor.

(C) A department employee who is on detail is entitled to the same salary and benefits to which the employee otherwise would be entitled, and the employee shall remain as an employee of the department for all other purposes, except that the supervision of the duties during the period of detail may be governed by the agreement between the department and the contractor.

(D) Any provisions of the agreement between the department and the contract concerning the supervision of an employee on detail shall provide equal or superior rights to those rights currently possessed by an employee on detail in the areas of performance evaluation, grievance, discipline, and termination.

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SECTION 10. Tennessee Code Annotated, Section 41-24-105, is amended by deleting the section in its entirety and substituting instead the following:

- (a) For any contract to provide correctional services as defined in §41-24-102(2)(F), the contract term shall not exceed three (3) years.
- (b) The initial contract may include an option to renew for an additional period of two (2) years.
- (c) To be considered for the award of a contract to operate facilities as defined by §41-24-102(2)(F), a contractor shall demonstrate that it has:
 - (1) The qualifications, operations and management experience and experienced personnel necessary to carry out the terms of the contract;
 - (2) The ability to comply with applicable correctional standards and specific court orders, if required; and
 - (3) A demonstrated history of successful operation and management of other correctional facilities; provided, however, a contractor may substitute proof of experienced full time corrections professionals in its employment to satisfy the requirements of this subdivision (3).
- (d) Any request for proposals, any proposals, any original contract, any contract renewal, or amendment to any contract, for the operation of facilities as defined by Section 41-24-102(2)(F) shall include a description of the following terms and conditions or shall include a reference to the following terms and conditions that remain unchanged by such proposal, contract, or contract renewal or amendment:

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- (1) Proposer qualifications;
- (2) Selection and award process;
- (3) Detailed scope of contract services and requirements;
- (4) Detailed scope of state services and requirements;
- (5) Contract time frames, duration and renewals;
- (6) Safety and security requirements;
- (7) Detailed financial requirements, terms and conditions, reporting and auditing process;
- (8) Contract compliance, monitoring, and evaluation requirements and process; and
- (9) Provisions and remedies for contract noncompliance.

SECTION 11. Tennessee Code Annotated, Section 41-24-106, is amended by deleting from subdivision (1) the language “the prison” and substituting instead the language “an affected facility”.

SECTION 12. Tennessee Code Annotated, Section 41-24-112, is amended by deleting the section in its entirety and substituting instead the following:

- (a) Any prison contractor awarded a contract for correctional services as defined in §41-24-102(2)(F) shall offer a retirement plan for department of criminal justice employees who were in positions under the control and supervision of the department and who are members of the Tennessee consolidated retirement system immediately preceding the contract implementation date. Such retirement plan shall provide

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substantially the same death, disability and retirement benefits as provided for Group 1 state general employees under the laws governing the Tennessee consolidated retirement system as they exist on the contract implementation date, including the noncontributory provisions of §8-34-206 and the cost-of-living benefit provisions of §8-36-701. The actuarial firm utilized by the Tennessee consolidated retirement system may be retained to make such comparison of benefits.

(b) Upon any such employee's separation from service with the contractor, the contractor shall compute the death, disability or retirement benefit, if any, payable to, or on account of, such employee under the provisions of the Tennessee consolidated retirement system as they existed on the contract implementation date. In calculating any such benefit, the contractor shall use all years of creditable service such employee had in the Tennessee consolidated retirement system immediately preceding the contract implementation date, plus all years of service the employee rendered to the contractor after such date. All earnable compensation received by the employee from the state immediately preceding the contract implementation date and all earnable compensation received by the employee from the contractor after such date shall be used in determining the employee's average final compensation pursuant to §8-34-101(4).

(c) The retirement, death or disability benefit payable by the contractor shall be equal to or better than the benefit calculated under subsection (b) above, minus any benefit which is, or would have been, payable by the Tennessee consolidated retirement

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system based upon the employee's years of creditable service and average final compensation under the retirement system at the time of the contract implementation date. If, on the contract implementation date, the employee does not have the minimum years of service necessary under the retirement system to be eligible for a retirement, death or disability benefit under the laws governing the Tennessee consolidated retirement system, the contractor shall pay the entire benefit calculated under subsection (b) above.

(d) Any employee described herein may request a refund of that employee's accumulated contributions from the Tennessee consolidated retirement system at any time after the contract implementation date. Upon receipt of a refund, the employee's membership in the Tennessee consolidated retirement system shall terminate and the employee shall be deemed to have waived all rights in the retirement system. Provided, however, any such refund shall not increase nor decrease the amount payable by the contractor under subsection (c) above. In calculating the benefit under subsection (c) above, the contractor shall calculate the amount of the benefit which would have been payable by the Tennessee consolidated retirement system had the employee not obtained a refund.

(e) In lieu of receiving a refund from the Tennessee consolidated retirement system, the employee may leave the contributions in the system and continue to be credited with interest as provided in title 8, chapters 34-37. The employee may apply for a retirement allowance from the Tennessee consolidated retirement system upon

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meeting the eligibility conditions for such an allowance. The employee's retirement allowance from the retirement system shall be computed and paid in accordance with the provisions of title 8, chapters 34-37.

(f) Any employee described herein may elect not to be covered by the retirement plan established by the contractor under this section. Such election must be in writing and submitted to the contractor within ninety (90) days of the effective contract implementation date. Only those employees electing not to be covered under this section shall be eligible to participate in another retirement plan offered by the contractor to its employees.

(g) Any prison contractor awarded a contract for correctional services as defined in § 41-24-102(2)(F) shall also establish and maintain an insurance plan for employees described herein who are retired and who are drawing benefits pursuant to a retirement plan established by the contractor pursuant to this section. Such insurance plan shall provide substantially the same benefits package afforded to retired state employees pursuant to title 8, chapter 27 as such package exists on the contract implementation date.

(h) If a contract for correctional services as defined in §41-24-102(2)(F) is terminated for any reason and the contract is awarded to a subsequent prison contractor, the prison contractor shall offer a retirement plan and a retiree insurance plan for all employees of the prior prison contractor who are covered by the provisions of this section. Such plans shall meet all the terms and conditions of this section.

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(i) The Tennessee consolidated retirement system is expressly authorized to provide to prison contractors such information concerning employees described herein as may be within the retirement system's possession or control, and to otherwise cooperate with prison contractors to assist them in complying with the provisions of this section.

(j) Neither the state of Tennessee nor the Tennessee consolidated retirement system shall, as a result of any contract entered into under this chapter, be liable for benefits beyond those benefits otherwise provided for other members of the Tennessee consolidated retirement system, nor shall the state or the Tennessee consolidated retirement system assume or incur any liability for any impairment, interruption, or diminution of the rights and privileges of any employee which may result from a contract entered into under this chapter.

(k) Notwithstanding the provisions of this section to the contrary, an employee may elect to participate in an alternative retirement plan of a contractor.

SECTION 13. Tennessee Code Annotated, Section 41-24-113, is amended by deleting subsections (a) and (b).

Tennessee Code Annotated, Section 41-24-113, is further amended by designating subsection (c) as subsection (a), and by adding the following new subsection:

(b) Nothing in this chapter shall in any way limit the rights of the employees of a contractor to join together for the purpose of collective bargaining as described in Section 7 of the National Labor Relations Act.

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SECTION 14. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 15. This act shall take effect upon becoming a law, the public welfare requiring it.

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